IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

MFA.No. 1460 of 2001(B)

OP(MV).927/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA .
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APPELLANT: (PETITIONER)

CHINNAPPAN,
S/O. KOCHUNNI,
MARATHUVALAPPIL HOUSE ,
URAKAMP.O., THRISSUR.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: (RESPONDENTS)
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1. ABDUL JALEEL,
S/O. SYED MOHAMMED,
STATIONARY MERCHANT,
PALLEPATTA, PALAKKAD.

2. M.A.RAVEENDRANATH,
S/O. AYYAPPAN, VAINPULI HOUSE,
PERUMBILLISSERY, CHERPU.

3. THE MANAGER, ORIENTAL INSURANCE COMPANY,
SOUTH JUNCTION, CHALAKUDY.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA) - R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1460 OF 2001

Dated 28th November, 2007

JUDGMENT

Koshy,J.

Appellant/claimant met with an accident on 30.10.1993. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. However, against a claim of Rs.1,50,000/=, the Tribunal awarded a compensation of Rs.27,800/=. Only quantum of compensation is disputed in this appeal.

2. Ext.A4 is the wound certificate, Ext.A5 is the discharge summary and Ext.A8 is the disability certificate. Medical certificates would show that the appellant was treated as an inpatient in the hospital from 30.10.1993 to 10.11.1993. He has sustained injury to the right ear, fracture to the left clavicle, fracture to the third rib left side and fracture to the base of Vth meta tarsal right foot. The ear was repaired by plastic surgery, POP slab and clavicle brace was applied. Ext.A6 shows that even after discharge he was again treated in the Medical College Hospital, Thrissur. The disability certificate also shows that clavicle fracture has united with angulation and he was having mal united fracture of the left 3rd rib with persistent pain and adhesion of

lung and mal united fracture of the base of the 5th metatarsal bone right foot. Pain and stiffness of the left shoulder, pain and stiffness of the right foot with recurrent swelling and he is unable to do any work with left hand . There is also partial loss of hearing right ear. The Lecturer in Orthopaedics in Medical College Hospital, Thrissur issued certificate assessing 15% disability. Merely because he was not examined, Tribunal discarded the above and no compensation was awarded for disability and loss of earning power. Appellant was a coolie worker. Fracture of the ribs which was not united as well as fracture of the base of the 5th metatarsal bone right foot and inability to move freely, not to do work with the left hand etc. will certainly affect his earning capacity and, therefore, we are of the opinion that Tribunal ought to have granted compensation for 15% disability. He was a coolie worker. The accident occurred only in 1993. Therefore, we are taking his monthly income as Rs.1,800/=. If Rs.1,800/= is taken as the monthly income and 11 is taken as the multiplier, the compensation payable for 15% disability will be Rs.35,640/= (Rs.1,800 x 12 x 11 x $\frac{15}{100}$). No amount was awarded for loss of earning capacity and permanent disability. For loss of actual wages for the period of treatment, Tribunal granted Rs.4,000/= taking Rs.1,000/= as monthly income. Since we have taken Rs.1,800/= as the monthly income, appellant will be entitled to an additional amount

of Rs.3,200/= on that count. It was submitted that compensation granted for pain and suffering and compensation granted under other heads are very meagre. But, considering the total amount granted, we are not enhancing the compensation granted under any other head. The additional amount of Rs.38,840/=, over and above the decreed amount by the Tribunal, should be deposited by the third respondent insurance company with 7% interest from the date of application till its deposit. On deposit of the amount, the appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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